

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

CHESTINE EDGAR, et al,

Petitioner,

v.

CITY OF BURIEN,

Respondent.

CASE NO. 11-3-0004

**ORDER ON MOTION FOR
RECONSIDERATION**

THIS Matter comes before the Board on the Petitioners' Motion for Reconsideration.¹

Petitioners are a group of residents² concerned about deteriorating water quality in Lake Burien. Their Petition for Review (PFR) challenged Ordinance No. 551, in which the City denied their application to amend the City's land use designation for the area surrounding the lake. The City's 1999 Comprehensive Plan designated the Lake Burien area "moderate density single family residential." Petitioners sought a "low-density residential" designation to reduce environmental threats to the lake.

On May 12, 2011, the Board issued its Order on Motions dismissing the PFR.³ In its Order on Motions, the Board determined that the land use designation for the Lake Burien area was adopted by the City in 1999; thus, Petitioners' 2011 challenge to the designation (and to the City's refusal to change it) was untimely. Further, the Board concluded it lacks

¹ Petitioners' Motion for Reconsideration, May 23, 2011.

² Chestine Edgar, Robert Edgar, Robert Howell, Robbie Howell, Len Boscarine, Linda Plein, Sandy Glenhill-Young and the Lake Burien Neighborhood (collectively Petitioners).

³ Board member Dave Earling, who served as Presiding Officer for this case, has resigned from the GMHB. The Governor has not yet appointed a replacement. The continuing panel to address the present motion consists of Margaret Pageler as Presiding Officer and Board member Joyce Mulliken.

1 jurisdiction to hear a challenge to denial of a proposed comprehensive plan amendment
2 except in limited circumstances not applicable here.

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4 Petitioners' Motion for Reconsideration asserts that the Board, in deciding this matter on
5 preliminary motions, lacked the full understanding of relevant facts and law. Petitioners
6 argue review on the merits is required for compliance (1) with the GMA and its "best
7 available science" requirement for critical areas regulations, (2) with SEPA, and (3) with the
8 Shoreline Management Act as incorporated in the GMA through RCW 36.70A.480.
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10 The Board's Rules of Procedure at WAC 242-02-832(2) provide:

11 A motion for reconsideration shall be based on at least one of the following grounds:

- 12 (a) Errors of procedure or misinterpretation of fact or law, material to the party seeking
13 reconsideration;
14 (b) Irregularity in the hearing before the board by which such party was prevented from
15 having a fair hearing; or
16 (c) Clerical mistakes in the final decision and order.

17 On review, the Board concludes there is no error of fact or law, and no irregularity in the
18 proceedings, to support reconsideration of its Order.
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20 *Best Available Science.*

21 Petitioners contend the City failed to use best available science in protecting Lake Burien
22 and associated wetlands. Petitioners assert Ordinance 394, adopting the City's critical areas
23 regulations in 2003, arbitrarily down-graded the Lake Burien wetlands from Category 2 to
24 Category 4 and reduced buffers from 50 feet to 30 feet without the required scientific
25 analysis.⁴ Petitioners further assert the City's Storm Drainage Master Plan ignores the Lake
26 Burien drainage basin.⁵
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32 ⁴ Motion, at 9-10

⁵ Motion, at 7, 15

1 The Board notes that the City's Critical Areas Ordinance was adopted in 2003. Any
2 challenge to best available science applicable to Lake Burien and associated wetlands was
3 required to be filed within 60 days of publication of that ordinance.⁶
4

5 SEPA

6 Petitioners contend the City acted on faulty SEPA analysis.⁷ Petitioners state the City
7 undertook an EIS process for its comprehensive plan in 1996-97. Petitioners state the 1997
8 FEIS identified the environmental sensitivity of the Lake Burien area and required a low
9 density land use designation as mitigation; accordingly, low density was adopted for the
10 area in the City's 1997 comprehensive plan.⁸ The designation was changed to medium-
11 density residential in the 1999 comprehensive plan without any new environmental analysis
12 or alternative mitigation, Petitioners say. Further, Petitioners assert the City's practice is to
13 revise its comprehensive plan through cumulative addenda to the 1997 FEIS.⁹ Thus the
14 2003 Critical Areas Ordinance was adopted using a SEPA addendum to the 1997 FEIS but
15 without justification for reduced protections for Lake Burien, according to Petitioners.¹⁰
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18 The Board notes challenges to SEPA determinations sometimes involve a city
19 administrative process. Otherwise, the challenge is required to be filed with the Board within
20 60 days of publication of the associated comprehensive plan or regulatory amendment.¹¹ In
21 the present case, neither the 1999 re-designation of the Lake Burien neighborhood nor the
22 2003 reduction of critical areas protection for the Lake Burien wetlands was appealed within
23 the 60-day period.
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26 Shoreline Master Program
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29 ⁶ RCW 36.70A.290(2)(a)

30 ⁷ Motion, at 5-13

31 ⁸ Motion, at 5-8

32 ⁹ Petitioners indicate these addenda are not readily available to the public. Motion, at 5, 13.

¹⁰ Motion, at 9

¹¹ RCW 36.70A.290(2)(a)

1 Petitioners contend the City's action is inconsistent with RCW 36.70A.480 and the Shoreline
2 Management Act standard for "no net loss" of shoreline ecological function. Petitioners
3 argue the Lake Burien water quality and drainage functions are deteriorating, and restricting
4 property development is a recognized and effective strategy to achieve the SMA "no net
5 loss" standard.
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7 The Board notes the City's Shoreline Master Program is being updated. Any challenge is
8 required to be filed within 60 days of the City's publication of approval or disapproval by the
9 Department of Ecology.¹²
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11 In sum, the Board concludes there is no irregularity in the proceedings in this matter and no
12 error of fact or law in its Order on Motions to support reconsideration of its dismissal of the
13 PFR in this case.
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15 ORDER

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17 Based upon the May 12, 2011 Order on Motions, the Petitioners' Motion for
18 Reconsideration, the GMA, Board rules and case law, and having deliberated on the matter,
19 the Board ORDERS:
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- 21 • The Board finds no error of procedure or misinterpretation of fact or law in its Order
22 on Motions to support reconsideration of its dismissal of the Petition for Review.
23 The Petitioners' Motion for Reconsideration is **denied**.
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32 ¹² RCW 36.70A.290(2)(c). Note: this provision has been amended effective July 1, 2011, by SB 5192(11), to
require appeal within 60 days of publication of final action by the Department of Ecology.

1 DATED this 7th day of June, 2011.

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3 _____
Margaret Pageler, Board Member

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5 _____
6 Joyce Mulliken, Board Member

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9 Note: This order constitutes a final order as specified by RCW 36.70A.300 and WAC 242-
10 02-832. Pursuant to WAC 242-02-832 (3), a board order on motion for reconsideration is not
11 subject to a motion for reconsideration.
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